

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 15-14186-GAO

GEORGE KERSEY, et al.,
Plaintiffs,

v.

PRUDENTIAL INSURANCE AGENCY, LLC,
Defendant.

ORDER
June 28, 2016

O'TOOLE, D.J.

For the reasons set forth below, the Court denies the plaintiff's motion for default and directs the clerk to add to the docket The Prudential Insurance Company of America as a defendant and to issue summonses for service of the original complaint on Prudential Insurance Agency, LLC and The Prudential Insurance Company of America.

I. Background

On December 16, 2015, Plaintiff George Kersey filed a "Complaint for Wrongs by Prudential" on behalf of himself and Paul and Deborah Fraser. See Complaint, Docket No. 1. Without finding that Kersey could assert claims on behalf of the Frasers, he was granted the opportunity to show cause why he is not collaterally estopped from prosecuting the instant action against Prudential Insurance Agency, or file an amended complaint. See Memorandum and Order, Docket No. 5.

By motion dated February 11, 2016, the Prudential defendants moved for an extension of

time to serve a responsive pleading to the complaint through and including thirty (30) days after the Court rules on the Order to Show Cause. See Docket No. 8. Despite Kersey's opposition, the motion for extension of time was allowed. See 02/23/2016 Electronic Order, Docket No. 11.

Now pending before the Court is Kersey's show cause response and motion for default. See Docket Nos. 10, 13. Defendant opposes the motion for default. See Docket No. 14.

II. Discussion

Kersey's motion for default will be denied. Summons have not yet issued. As noted in Prudential's opposition, the time for the Prudential Defendants to respond to the Complaint has not even begun (much less expired).

After review of Kersey's show cause response, the Court will not enter a *sua sponte* dismissal based on principles of claim preclusion. The Clerk will be directed to issue summonses for service of the original complaint on the defendants.

Despite this Court's Electronic Order of February 23, 2016, which granted defendants an extension of time to serve a responsive pleading to the complaint through and including thirty days after the Court rules on the Order to Show Cause, Kersey is responsible for effecting timely service of process. See Fed. R. Civ. P. 4(c), 4(m).

III. Conclusion

Accordingly:

- (1) The motion for default (#13) is DENIED.
- (2) The Prudential Insurance Company of America shall be added to the docket as a defendant.

(3) The Clerk shall issue summonses for service of the original complaint on Prudential Insurance Agency, LLC and The Prudential Insurance Company of America.

(4) Kersey is responsible for effecting service of process within 90 days of the date of this Order, failing which, this action may be dismissed. Because Kersey is proceeding *in forma pauperis*, he may ask the United States Marshals Service to complete service, with all costs to be advanced by the United States.

SO ORDERED.

/s/ George A. O'Toole, Jr.
GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE